

HOUSE BILL REPORT

HB 2790

As Reported by House Committee On:
Criminal Justice & Corrections

Title: An act relating to advisory sentencing guidelines.

Brief Description: Providing advisory sentencing guidelines.

Sponsors: Representatives Rodne, O'Brien, Woods, Ericks, Hinkle, Kessler, Simpson and Darneille.

Brief History:

Committee Activity:

Criminal Justice & Corrections: 1/20/06 [DPS].

Brief Summary of Substitute Bill

- Makes the upper limit of the standard range advisory only for violent offenses.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives O'Brien, Chair; Darneille, Vice Chair; Pearson, Ranking Minority Member; Ahern, Assistant Ranking Minority Member; Kirby, Strow and Williams.

Staff: Jim Morishima (786-7191).

Background:

Prior to 1984, courts were required to impose "indeterminate" sentences upon persons convicted of crimes. Under this system, a court would impose a minimum term and a maximum term. The Board of Prison Terms and Paroles (now called the Indeterminate Sentence Review Board) would evaluate the offender and determine whether he or she could be paroled prior to the expiration of the maximum term. Indeterminate sentencing still applies to offenders convicted for offenses committed prior to July 1, 1984.

In 1981, the Legislature enacted the Sentencing Reform Act, which imposed "determinate" sentences on offenders convicted on or after July 1, 1984. Under determinate sentencing, a court must sentence an offender to a term within a standard range. The standard range is determined using a grid with the offender's criminal history (called "offender score") on the horizontal axis and the severity of the crime (called "seriousness level") on the vertical axis.

Prior to 2004, a court could, on its own initiative, sentence an offender outside the standard range if it found, by a preponderance of the evidence, that aggravating or mitigating circumstances existed. This type of sentence is known as an "exceptional sentence." In 2004, the United States Supreme Court ruled that sentencing an offender above the standard range in this manner is unconstitutional. *Blakely v. Washington*, 542 U. S. 296 (2004). According to the supreme court, any factor that increases an offender's sentence above the standard range, other than the fact of a prior conviction, must be proved to a jury beyond a reasonable doubt.

In 2005, the Legislature amended the procedure for imposing exceptional sentences in light of *Blakely*. Under this new procedure, the prosecutor must provide notice that he or she is seeking a sentence above the standard range. The prosecutor must then prove the aggravating circumstances justifying such a sentence to a jury beyond a reasonable doubt. The court's authority to impose an aggravated exceptional sentence on its own initiative was limited by the 2005 changes.

Other methods to address *Blakely* have been considered by other jurisdictions, including the federal government. For example, in *United States v. Booker*, 543 U. S. 220 (2005), the United States Supreme Court invalidated a portion of the federal law, which, in effect, made the federal sentencing guidelines advisory only. This enabled a court to sentence an offender on its own initiative, and for reasons that do not have to be proved to a jury beyond a reasonable doubt, without violating *Blakely*.

Summary of Substitute Bill:

The upper limit of the standard range is advisory only for offenders convicted of a violent offense. The court may, on its own initiative, sentence such an offender above the standard range. However, if the prosecutor seeks an aggravated sentence, he or she must assert a statutory aggravating factor for doing so. The upper limit of a sentence for a violent offense is as follows:

- If the lower limit of the standard range is more than 12 months, the upper limit is the lesser of the statutory maximum sentence or twice the upper limit of the standard range; or
- If the lower limit of the standard range is 12 months or less, the upper limit is the lesser of 12 months or twice the upper limit of the standard range.

In making its determination of the sentence length, the court must consider the risk assessment prepared by the Department of Corrections, if any, the pre-sentence report, if any, materials provided by the offender, and any materials provided by the victim. The new upper limits do not prevent an offender from receiving an aggravated exceptional sentence.

Substitute Bill Compared to Original Bill:

The substitute bill inserts intent language and clarifies that the Department of Corrections is not required to generate the risk assessments and pre-sentence reports mentioned in the

legislation. The substitute also clarifies that the legislation does not prohibit an offender from receiving an aggravated exceptional sentence up to the statutory maximum.

Appropriation: None.

Fiscal Note: Requested on substitute bill.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect immediately.

Testimony For: None.

Testimony Against: None.

Persons Testifying: None.

Persons Signed In To Testify But Not Testifying: None.